



STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

Mark C. Draper, Chair

Cynthia S. Bertocci
Executive Analyst

Ruth Ann Burke
Board Clerk

JANET T. MILLS
GOVERNOR

MEMORANDUM

To: Memo to the File, Nordic Aquafarms, Inc.
Applications for Air Emission, Site Location of Development, Natural Resources
Protection Act, and Maine Pollutant Discharge Elimination System /Waste Discharge
License
From: Cynthia Bertocci, Executive Analyst
Re: Pre-Hearing Conference October 17, 2019
Date: October 28, 2019

On October 17, 2019, Board staff held a pre-hearing conference with the parties to the Nordic Aquafarms proceeding at the Marquardt Building in Augusta, Maine. The purpose of the conference was to review the list of issues that the intervenors would like to address at the hearing and the relevance of those issues to the licensing criteria, as well as to review the itinerary for the Board’s site visit scheduled for October 23, 2019. This memorandum documents the matters discussed at the conference. Presiding Officer Robert Duchesne and a few intervenor representatives were not able to attend due to weather conditions. Board staff conducted the conference at the request of the Presiding Officer.

Participants:

Cynthia Bertocci, Board Executive Analyst
Peggy Bensinger, Assistant Attorney
General (AAG)
Scott Boak, AAG
Laura Jensen, AAG
Ruth Ann Burke, Board Admin. Assistant
Kevin Martin, DEP Office of the
Commissioner
Nick Livesay, Director, Bureau of Land
Resources
Beth Callahan, DEP Bureau of Land
Resources
Gregg Wood, DEP Bureau of Water Quality
Patric Sherman, DEP Bureau of Air Quality
Joanna Tourangeau, Drummond Woodsum
for Nordic
Erik Heim, Nordic
Ed Cotter, Nordic
Marianne Naess, Nordic

Elizabeth Ransom, Ransom Consulting, Inc.
for Nordic
Jacki Cassida, Nordic
Anne Saggese, The Fish Are Okay
Scootch Pankonin, The Fish Are Okay
Judy Metcalf, Northport Village Corp.
David Losee, for Upstream Watch
Kim Ervin Tucker, for Maine Lobstering
Union, Wayne Canning, and David Black;
and Jeffrey R. Mabee and Judith B. Grace
Jeffrey R. Mabee
Eleanor Daniels, for herself and Donna
Broderick
Lawrence Reichard

Others Present:

Philip Conkling, Conkling & Associates
Tim C. Walton, Walton External Affairs
Andrew Stevenson, Belfast resident
Jamie Philips, Belfast resident

Ms. Bertocci opened the conference at 11:00 am. She stated that Presiding Officer Duchesne was unable to attend the conference due to weather conditions and had asked Ms. Bertocci and Ms. Bensinger to proceed with the conference in his absence. Ms. Bertocci noted that no rulings would be made in the Presiding Officer's absence. Representatives for intervenors University of New England and Gulf of Maine Research Institute were also not able to attend the conference.

1. Review of Issues Identified by Intervenors

In the Second Procedural Order, Presiding Officer Duchesne required each intervenor to submit by September 30 a preliminary list of issues that the intervenor would like addressed at the hearing either through cross-examination of the applicant's witnesses or through the presentation of witnesses. Ms. Bertocci distributed a table summarizing the issues identified in the submissions organized by intervenor and permit type. A copy of that table is attached to this memorandum. Ms. Bertocci and Ms. Bensinger reviewed the list of issues with the participants. They stated that the following issues listed by intervenors are not relevant to the licensing criteria: financial capacity to pay for damages, insurance in the event of malfunction, traffic both during construction and during operations, lost opportunity for restoration of a fishway on the Little River, and impact on property values.

With respect to truthfulness/trustworthiness, Ms. Bensinger explained that it is not a licensing criterion; however, parties can challenge the accuracy of evidence submitted as well as the credibility of a witness testifying on a specific issue. With respect to carbon release and the carbon footprint of the proposed project, Ms. Bensinger stated that there is a provision in Chapter 375 (Section 2, No Unreasonable Alteration of Climate) which may be considered but noted that the provision is generally intended to address large-scale industrial facilities such as power generating plants. Ms. Bensinger further commented on the limited nature of the noise standard, noting that it does not apply to construction noise and it pertains largely to noise generated after 7 pm and before 7 am.

With respect to criteria pertaining to the waste discharge application, Ms. Daniels asked if the Department has developed a water quality standard for nitrogen in receiving waters. DEP staff member Gregg Wood responded that the Department is working on the development of a standard for nitrogen in surface waters, but it will likely be at least 2 years before a standard can be developed and promulgated in rule.

2. Issues to be Addressed at the Hearing

Ms. Bensinger noted that the list of issues submitted by the intervenors is lengthy. To use the Board hearing time most effectively, the Board intends to focus hearing time on the issues identified by intervenors and Department staff that would most benefit from live testimony and cross-examination of witnesses. Issues related to the other licensing criteria can be addressed through written comments submitted to the Department. To narrow the issues for the hearing, each intervenor was asked to identify the 3 or 4 issue areas relevant to the licensing criteria that the intervenor believes would be most important to be the subject of live testimony and cross-examination of witnesses. Parties were also asked to identify the issue areas for which the party plans to present a witness (either the testimony of an

individual intervenor, or another person such as a consultant or person with special expertise in a subject area who would be appearing on behalf of the party). It was noted that an intervenor is not required to present witnesses. An intervenor that does not present witnesses may cross-examine the applicant's witnesses and the witnesses presented by other intervenors. Parties were reminded that witnesses will be required to pre-file their testimony and must be present at the hearing for cross-examination. If a witness does not appear at the hearing, the witness' pre-filed testimony may not be allowed. Staff requested that the intervenors submit their list of issues for the hearing and identify issue areas for which they intend to bring witnesses by Thursday, October 24, 2019 at 5:00 pm.

Ms. Bensinger explained that members of the public will be asked to focus on the hearing issues but may be given latitude to testify on matters relevant to any of the licensing criteria.

3. Consolidation

Ms. Bensinger commented that Presiding Officer Duchesne has authority to consolidate intervenors but has not ordered any such consolidation to date. In response to a question from Ms. Bensinger, Ms. Tucker confirmed that Intervenor Jeffrey Mabee and Judith Grace and Intervenor Maine Lobstering Union have consolidated their appearances and that she represents both. Ms. Bensinger indicated that the Presiding Officer intended to question University of New England and Gulf of Maine Research Institute on whether they plan to consolidate their appearance, but this topic was not pursued since neither intervenor was present.

4. Site Visit

Ms. Bertocci distributed an itinerary for the Board's site visit which was developed from suggestions offered by the intervenors and applicant. She commented that, while there were suggestions to view the proposed development site from a number of private properties, the Board prefers not to traverse private property with the exception of the proposed development site and the intertidal area. Mr. Mabee expressed displeasure that he had not been consulted regarding placement of flags in the intertidal area but did not formally object.¹ Ms. Bertocci explained that the proposed flagging in the intertidal area would be limited and was for the sole purpose of enabling Board members to view the direction of the proposed pipeline across the intertidal area and the nature of the substrate in that location. She stated that the purpose of the site visit was to orient Board members to the physical and natural features at the site and surrounding properties, and that there would be no discussion of the merits of the proposed project.

With respect to attendance, Ms. Bertocci stated that intervenors may attend the site visit but requested that attendance be limited to no more than two persons from each intervenor group. She commented that numbers are limited for logistical purposes.

¹ Intervenor Jeffrey Mabee and Judith Grace subsequently objected to placement of flagging in the intertidal area unless the extent of the proposed excavation work area was demarcated. Given this objection, the proposed pipeline route through the intertidal area was not flagged for the Board's site visit.

Ms. Bensinger commented that the site visit would be led by Department staff. Participation by the applicant would be limited to flagging areas of proposed structures and confirming the location of certain physical features on the site. Ms. Bensinger also reminded parties of the ex-parte communication rule and cautioned parties against communication with Board members.

Ms. Callahan reminded parties that they would be walking on uneven ground and mudflats, that ticks are active, and that articles of blaze orange are recommended for visibility.

5. Status of Application Review and Schedule.

Ms. Bertocci commented that Department staff requested, by letter dated October 9, 2019, additional information from the applicant related to its Site Law/NRPA application and asked when Nordic anticipated responding to that request. Ms. Tourangeau responded that Nordic will be filing its response by the end of October. Mr. Livesay commented that the Department does not anticipate further information requests with respect to the Site/NRPA applications. Mr. Wood and Mr. Sherman commented that the Department does not have further requests regarding the Waste Discharge or Air emissions applications, respectively.

Ms. Bensinger stated that Presiding Officer Duchesne will be setting a schedule for the filing of pre-filed direct testimony following receipt of Nordic's response to the pending Site/NRPA information request. Based on past experience, she stated that the deadline may be on the order of four weeks, followed by approximately two weeks for the filing of rebuttal testimony, and that intervenors should be preparing their testimony now.

In response to a question from Ms. Tourangeau, Ms. Bensinger stated that the hearing would not be held before Christmas. Ms. Bertocci stated that the hearing date will be noticed 45 days prior, and again 30 days prior, to the hearing in accordance with the requirements of the Clean Water Act and the Maine Administrative Procedure Act, respectively.

The conference ended at approximately 12:30 pm.

**Pre-Hearing Conference, Nordic Aquafarms, Inc.
October 17, 2019 at 10:00 am
Marquardt Building, 32 Blossom Lane, Augusta
State Office Complex East Side**

Agenda

- 1. Purpose of the Conference**
- 2. Review of Issues Identified by Intervenors**
 - a. Relevance to licensing criteria**
 - b. Issues for oral testimony at hearing v. written submittals to DEP staff**
 - c. Issues for which intervenors intend to present witnesses**
- 3. Opportunities for Consolidation**
- 4. Site Visit**
 - a. Review draft itinerary**
 - b. Building/infrastructure locations flagged**
 - c. Role of applicant**
 - d. Attendance**
 - e. Logistics**
 - f. Ex-parte communications reminder**
- 5. Status of Application Review / Schedule**
 - a. Department's additional information requests**
- 6. Other**

Note: Participation is limited to the applicant and intervenors, others may observe.

Nordic Aquafarms: List of Possible Hearing Issues Identified by Intervenor.

Check indicates topic is relevant to the licensing criteria and parties and members of the public may submit written comments and evidence to the Department. 10/17/2019

Issues identified by Intervenor	Northport Village Corp	Grace/Mabee And MLU	TFAO	Gulf of Maine	UNE	Upstream Watch	Daniels Broderick	Reichard	Relevant to Criteria
General									
• Financial Capacity – construct, operate, maintain, and pay for damages	X	X				X	X		✓
• Insurance in event of malfunction	X								N/R
• Technical Ability								X	✓
• TRI – intertidal area		X					X		✓
• Truthfulness, Trustworthiness		X					X		N/R
Air – emissions from on-site generators	X					X			✓
Site/NRPA									
• Operations: noise, odor, traffic	X					X			✓
• Construction: excavation/blasting, noise, dust, odor?, traffic, effect of vibrations on dam integrity	X					X	X		✓
• Disturbance of HoltraChem mercury: dredging, blasting, re-suspension, dispersal	X	X		X		X			✓
• Siting – soils suitability, stability, runoff							X		✓

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Issues identified by Intervenor	Northport Village Corp	Grace/Mabee And MLU	TFAO	Gulf of Maine	UNE	Upstream Watch	Daniels Broderick	Reichard	Relevant to Criteria
• Stormwater management, erosion and sedimentation	X					X	X		✓
• Water Demand / Consumption (quantity and quality of surface and groundwater). Impacts on aquifer, wells, saltwater intrusion, wetland/wildlife impacts, etc.	X	X	X	X		X	X	X	✓
• Natural Resource Impacts: streams, freshwater wetlands						X			✓
• Natural Resource impacts: intertidal and subtidal. Damage to critical habitats in Bay: eelgrass, shorebird, etc.		X				X			✓
• Alternatives Analysis: avoidance, minimization, including alternative sites for the facility.						X			✓
• Fisheries and marine life: impact of construction – excavation, etc. on existing fisheries and marine life, ecology of the Bay.	X	X		X	X	X			✓
• Wildlife impacts from cutting forest - bats						X			✓
• Shoreline erosion		X							✓
• Little River Trail: recreation, existing use			X					X	✓
• Little River: lost opportunity for restoration of fish way		X				X	X		N/A

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Issues identified by Intervenor	Northport Village Corp	Grace/Mabee And MLU	TFAO	Gulf of Maine	UNE	Upstream Watch	Daniels Broderick	Reichard	Relevant to Criteria
• Visual impact: scenic, aesthetic	X		X						✓
• Existing uses at the site and in the area			X						✓
• Solid Waste: identification, treatment, storage, disposition of wastes: fish processing residuals, soil removed from site, water/wwater treatment residuals, etc.	X					X			✓
• Fuel storage						X			✓
Wastewater Discharge									
• Impact of discharge on water quality in Bay, including cumulative impact	X	X		X		X			✓
• Impact of discharge on fisheries, marine life, ecology of the Bay	X	X		X	X	X			✓
• Impact of discharge on recreation/ beaches in Northport; fouling of beaches	X					X			✓
• Facility design and operations, RAS Technology, biosecurity				X	X	X			✓
• Storage capacity if can't discharge /contingency plans		X				X			✓
• Fish feed				X	X	X			✓

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Issues identified by Intervenor	Northport Village Corp	Grace/Mabee And MLU	TFAO	Gulf of Maine	UNE	Upstream Watch	Daniels Broderick	Reichard	Relevant to Criteria
• Nature of discharge: nutrients, pH, temp, salinity, BOD, solids, pathogens, therapeutics, etc.	X	X		X		X			✓
• Modeling of discharge, dispersal; effect on currents	X	X				X			✓
• Water quality monitoring and reporting				X		X			✓
Other									
• Property values		X							N/R
• Carbon release, carbon footprint.				X	X			X	✓

Nordic Aquafarms: BEP Site Visit, Wednesday, October 23, 2019 11:00 am

Meet at the Site (Belfast Water District) at 11:00 am.

Department staff will lead the site visit. Representatives of the applicant and the intervenors may attend.

- A) Review maps of facility layout and location of natural resources.
- B) Walk the proposed development site west of Route 1.
 - View location of proposed structural development. Corners of major structural development (e.g. grow-out modules) flagged. Note nature of existing vegetation (open field, forested, wetland, etc.), proximity to existing uses.
 - Location of streams
 - Location of production wells flagged
 - Walk a portion of the Little River Trail to point where Stream 3 empties into Reservoir 1. Note also where Stream 5/6 empties into Reservoir 1.
 - Note width of buffer zone between Reservoir 1 and development site.
 - View Lower Dam at outlet of Reservoir 1.
 - Walk portions of Stream 9.
 - Observe location of proposed water/wastewater treatment facility (corners flagged).
- C) View Route 1 pipeline crossing location. Note that portion of Route 1 will be temporarily relocated to facilitate pipeline crossing.
- D) Walk the proposed development site east of Route 1.
 - Easement area across Eckrote property.
 - Note where culvert work will occur.
 - Location of Streams 8 and 9.
 - Nature of coastal wetland – substrate, vegetation, TWWH.
 - View/walk pipeline route through the intertidal area – route flagged.
 - Walk coastal wetland from Eckrote property to mouth of Little River.
- E) Drive along Perkins Road to observe nature of existing uses, proximity to development site.
- F) Drive to Bayside, view Bayside Wharf, relationship to development site.
- G) View proposed development site from Browns Head / Edna Drinkwater School if publicly accessible.

Nordic: Site Visit Requests 10/02/2019

Northport Village Corp.
Bayside Wharf,
Shorefront Edna Drinkwater School (Browns Head)

Mabee/Grace and Maine Lobstering Union et al.
Hartley Conservation Area
Little River Center (Grace/Mabee)
Eckrote's Upland property
Lobstering grounds by water

The Fish Are Okay
Flimlin property, 52 Perkins Road, uses along Perkins Road

Gulf of Maine Research Institute
Get out on Belfast/Penobscot Bay to see location of the proposed discharge pipe outfall
Walk the proposed path of discharge pipe

Upstream Watch
Upper and Lower Dam
Little River Hiking Trail
Eckrote property and Mabee property including intertidal
Discharge point buoy: by boat and from shore - Town dock, Bixler property at Browns
Head, Saturday Cove
Bird Habitat from Mabee and Bixler properties
Good Karma Farm (69 Perkins Rd)
Block residence
Ellie Daniels' residence

Ellie Daniels and Donna Broderick
Grace/Mabee property
Route One crossing location
Little River Trail
Perkins Road
Flimlin property
Daniels/Broderick property
Randy and Jackie Curtis property
Cassida property

Reichard
Little River Hiking Trail

Applicant
General facility layout
Stormwater
Significant Groundwater Wells
Wetlands and Streams
Natural Resources
Buffers
Noise
Compensation Plan